IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

In re: W.R. GRACE & CO., et. al., CIVIL ACTION NO. 11-199 (Lead Case) **CIVIL ACTION NO. 11-200 CIVIL ACTION NO. 11-201 CIVIL ACTION NO. 11-202** Debtors. **CIVIL ACTION NO. 11-203 CIVIL ACTION NO. 11-207 CIVIL ACTION NO. 11-208 CIVIL ACTION NO. 09-644 CIVIL ACTION NO. 09-807** Procedurally Consolidated. **Table of Contents** I. A. В. The State of Montana Duty to Warn Litigation.....5 C. D. E. The Canadian Class Action Litigation.....8 F. Estate Asset and Fraudulent Conveyance Litigation with Grace Subsidiaries9 G. Н. 1. The Grace–CNA Settlement Agreement......11 2. AXA Belgium, GEICO, and Republic Excess General Liability Insurance I. Bank Lender Pre-Petition Litigation......14 J. Grace's Bankruptcy Petition and The Joint Plan of Reorganization......14 K. Bank Lender Post-Petition Litigation......16

The Bankruptcy Court Proceedings......20

L.

II.	Standard of Review								
	A.	Standard of Review Regarding Approval of the Settlement Agreement2							
	B.	Standard of Review Regarding Confirmation of the Joint Plan2							
III.	The C	e Grace and CNA Companies' Settlement Agreement24							
	A.	Application of the Martin Factors2							
	B.	Fairr	ement Agreement Related to Appellants' Purported R	dights to					
		the I	nce Policies	30					
		1. BNSF's Objections							
		2.	The Libby Claimants' Objections						
IV.	Conf	Confirmation of the Joint Plan							
	A.	The Good Faith Requirement							
	B.	Asbe	Asbestos Liability Trusts Under Section 524(g)						
		1.	1. The Two Trust Structure of the Joint Plan						
		2.	Requ	iirement	s of a Proper Trust Under Section 524(g)	52			
	C.	The	Section	524(g) (Channeling Injunction	54			
		1.	The	The Scope of the Channeling Injunction					
			a.	Exten	nsion of the Channeling Injunction to Independent Ins	surer			
				Wron	ngdoing Claims	55			
			b.	Exten	nsion of the Channeling Injunction to BNSF	61			
			c.	AMH	I's Objections to the Scope of the Channeling Injunct	ion64			
		2.	The l	Fairness	and Equality of the Channeling Injunction	65			
			a.	Appli	ication of the Channeling Injunction to MCC	65			
			b.	Appli	ication of the Channeling Injunction to CNA	68			
				i.	BNSF's Objections	68			
				ii.	The Libby Claimants' Objections	71			
		3.	The l	Effect of	f the Channeling Injunction on Releases from Liabilit	y Under			
		the Joint Plan							
	D.	Classification of Creditor Claims							
		1. The Section 1122(a) Classification Requirement							
		2.	Circumvention of the Section 524(g) Injunction79						

	3.	Defi	Definitional Requirements of "Claims" and "Demands" Under the					
		Banl	Bankruptcy Code					
		a.	Claims Under the Bankruptcy Code	81				
		b.	Demands Under the Bankruptcy Code	84				
E.	Feasibility of the Joint Plan.							
	1.	AMH's Feasibility Claims						
	2.	Mon	Montana's Feasibility Claims					
F.	Equality of Treatment Among Creditors							
	1.	The	The Libby Claimants' Discrimination Claims					
		a.	The TDP Criteria for Category IV-B	98				
		b.	Pre-Bankruptcy Settlements	102				
		c.	Grace's Non-Products Insurance Coverage	104				
	2.	BNS	F's Discrimination Claims	107				
		a.	Equal Treatment Under Section 1123(a)(4)	107				
		b.	Administrative Costs	116				
	3.	Mon	Montana and the Crown's Discrimination Claims					
		a.	Failure to Warn Liability	118				
		b.	The Effect of Timing on Treatment of Creditor Claims	120				
		c.	Equality of Payment and Treatment of Claims in Different	Classes				
			Under the Joint Plan	122				
	4.	AMI	H's Discrimination Claims	124				
G.	The Best Interest of the Creditors Test							
	1.	The Level of Specificity Required125						
	2.	The Consideration of Evidence Concerning Tort System Values131						
	3.	Recovery from Grace's Insurers in a Hypothetical Chapter 7 Case134						
H.	Impairment of Claims in Chapter 11 Reorganization Plans							
	1.	The	The Bank Lenders' Claims14					
		a.	Entitlement to the Post-Petition Default Interest Rate	144				
		b.	Section 1124(1) and Alleged Impairment Under the Joint P.	lan.159				
		c.	Solvency and Impairment	160				

		2.	AMH'	's Claims	165		
			a.	Entitlement to Post-Petition Interest	165		
			b.	The Effect of Impairment on Voting Rights	167		
	I.	The Li	ibby Cla	aimants Right to Trial by Jury Claims	168		
		1. Rights Under the Seventh Amendment to the United States					
			Consti	tution	169		
		2.	Statuto	ory Rights Pursuant to Section 1411(a)	175		
	J.	The Fair and Equitable Test and The Absolute Priority Rule					
	K.	Garlock's Objections to the Joint Plan					
		1.	Garloc	k's Standing	182		
			a.	Injury in Fact.	184		
			b.	Causation and Redressability	194		
			c.	Statutory Standing	195		
		2.	Garloc	ek's Arguments On the Merits	196		
			a.	"Fair and Equitable" Under the Bankruptcy Code	197		
			b.	The Effect of the Joint Plan and TDP on Garlock's Alleged Pr	re-		
				Petition Rights to Contribution and Set-off	203		
			c.	Appointment of an Independent Representative for Garlock's			
				Alleged Future Demands	209		
	L.	The A	The Anti-Assignment Provisions in Insurance Policies				
	M.	Residual Bank Lenders Issues					
		1.	The Best Interests of the Creditors Test and Legal Rate of Interest				
			Object	tions	220		
		2.	The Absolute Priority Rule Objections				
		3. The Fair and Equitable Test and the Authority of the Unsecure					
			Comm	nittee to Bind the Bank Lenders	223		
		4.	Dissol	ution of the Unsecured Creditors Committee	226		
V.	Conclu	usion			228		